

POLICING DOMESTIC VIOLENCE

The enthusiasm gap

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Those monitoring the Domestic Violence Act generally conclude that it is poorly understood and badly implemented by officials in the criminal justice system. But a project aimed at understanding how ordinary cops police South Africa's streets concludes that part of the problem with this conclusion is a failure to grasp the real limitations – legal, logistical and emotional – under which policing operates. These limitations, combined with the sheer volume of cases, affect the way in which ordinary officers handle these incidents.

Few pieces of legislation in the field of criminal justice have received as much attention from monitors and evaluators as has the Domestic Violence Act (116 of 1998) (DVA). In study after study, researchers and activists have found that the institutions charged with implementing the Act have not done so effectively. They have found instead that women complain that they are not told of their rights under the Act; that women who have reported incidents are not taken seriously; that perpetrators have not been arrested; and that victims have not been helped to find a place of safety.

These findings are too well documented to be doubted, and spending time in police vans will tend to confirm most of them.

It may well be that despite the apparent failure of the police to conduct themselves in terms of the letter and spirit of the DVA, they are, nonetheless, handling these incidents better than they once did. It is even possible that this might account, in part, for the decline in murder rates in South Africa over the past few years. This would be the case, for instance, if the additional attention that these cases have received, even if far from perfect, has deterred potential femicides.

The fact is, however, that when you ask street-level police officers about the DVA, their eyes tend to roll. This article seeks to explain why this is the case. It is based on a year-long stint of ride-alongs at 10 police stations across the country during which the author sought to understand policing from the grassroots up.¹

The research process, it must be acknowledged, was not especially scientific. The aim was not to quantify police responses or grade them against a predetermined scale purporting to measure either congruence with the legislation or their impact on people's lives. Nor were the views of those who needed the police obtained during the course of the research.

Instead, the objective was to watch ordinary cops policing South Africa's streets in order to understand how they saw and responded to their world. The idea was to see what really happened on the street and in people's houses, to understand what kind of situations officers confronted and how they dealt with them.

The burden of domestic violence

By far the most common incidents to which patrol officers were called were domestic disturbances of

some sort or another. Almost all these cases involved little or no physical violence, although in many cases threats had been made. And, even in the minority of cases in which there had been some pushing and shoving, or when punches had been thrown, the quantum of violence was relatively small and the physical injuries sustained were very light.

These calls often consumed large portions of uniformed officers' shifts, especially on weekends. In my experience, however, they very seldom resulted in arrests or in any other formal intervention by the attending officers. Instead, the officers would hear out both parties to the dispute and then offer some more-or-less unwanted advice about talking to their parents or a priest, obtaining a protection order or finding a way to live with each other. Then they would leave the scene and call in a 'negative' to radio-control, informing them that no crime was going to be reported and that no further action was warranted.

It must be said that matters were handled quite differently if there was some evidence of more serious violence and, especially, if blood had been spilled. Indeed, this appeared to be the benchmark against which police action was tested: if blood had been spilled, arrests were made; if not, the parties were advised to go to bed and were sometimes told to think about starting the process of obtaining a protection order in the morning.

In most cases – the majority of instances in which violence was minor or consisted only of threats – police officers did nothing more than talk to the parties before leaving. They failed, in other words, to live up to the expectations of the DVA which envisages (although it does not actually compel) police officers offering advice and assistance to the complainant, making more arrests, and generally playing a more interventionist role.

So why did the police tend to do so little?

A typical incident and how it's dealt with

The first thing to understand is that no domestic violence call is hermetically sealed off from others. Night duty on a weekend usually starts at 19h00.

The formalities of parade and booking-on procedures, however, mean that real policing begins closer to 20h00. Add to that the fact that the previous shift will have stopped attending calls somewhere between 18h00 and 18h30 (so that officers on day shift could be taken home and officers on night shift could be collected). In the end, by the time new takkies actually hit the tar, the best part of two hours will have elapsed since any complainants' cases have been dealt with. That, in turn, means that each vehicle on the new shift will be handed a list of complaints the moment they are ready to begin.

For police officers, the main problem with this list – some of which are longer than 10 – is that the incidents are indistinguishable: the information they receive consists of addresses, names (sometimes) and some indication of the nature of the complaint (usually something like assault, or some form of domestic or public disturbance). Unless there is a 'pointing of a firearm' case, there is little on which to base a decision to prioritise one call over another. With so little information, triage is impossible and, instead, officers divide the addresses up geographically to try to minimise their travelling time.

When they arrive at the first scene, if this is a typical case, they will be greeted with some combination of sullen silence and hysterical anger. They will not arrive to witness any violence at all and, if there had in fact been violence, it will probably have been quite minor.

This is all important: apart from the new exceptions created in the DVA which allow police officers to make arrests for common assault in cases in which a domestic relationship exists between the complainant and the alleged perpetrator, police officers are not allowed to make arrests for assault unless they witness the act themselves. There appears to be some reluctance to act on the new arrest-making powers created in the DVA, however, for reasons that will be described in a moment.

Having established their authority and the reason why they are there, the cops will ask what happened and will listen to all points of view.

Typically the stated reason for the fight will revolve around money and its absence, the poor behaviour of one or other member of the family, or some combination of both. By the time they have reached this point, however, the police will probably have already decided whether this is a case which warrants further attention or not.

If it is not already violent, if people are more-or-less cooperative, and if the officers have pressing business elsewhere, they will not want to take the matter forward. To achieve this, they will ask a simple question: 'What do you think we (meaning the police) can do about this problem?' This is not so much a question honestly posed, as a semi-rhetorical statement of the fact that they cannot help these people solve their problem.

They are telling them, in effect, that policing is a very blunt tool, and that for many of life's micro-dramas, it is far from an ideal instrument; that officers, using only the law, can do nothing for the parties that the parties cannot do for themselves; and that, in any event, they would probably be better off seeking their own solutions than invoking the heavy hand of the criminal justice system.

They are also doing something else, something more subtle: they are allowing both parties to withdraw from the argument and go to bed without the loss of face.

Many police officers are convinced that this is more or less all they are practically able to do in these circumstances. They argue that the people involved in these incidents are often proud, hardened perhaps by the privations of their lives, and that as a consequence, they are not able to back down from confrontations. To many, compromise is seen as weakness and they believe that if they show weakness they will be victimised again and again. That, according to the cops, is why these arguments escalate to the point that police must be called in the first place. It is also why the process of listening to the parties and then telling them that no solution is possible, and that they should both go to bed, is all that is needed to take the heat out of the dispute: that way neither loses any face.

An element of this argument is of course, self-serving. It contains, nevertheless, some important truths. But it is not the only reason police prefer to get out of these situations with as little further work as possible: the reality is that there are other cases to attend.

Recall that this is only one case in a list of complaints handed to patrol officers as they begin their shift. If they do decide to take statements at this scene and make arrests, it may well mean that there will be serious delays before they can attend the other scenes on their lists. And if they get tied up dealing with this matter (which they already know is not particularly violent), they may fail to attend another scene where, perhaps, a more serious crime is being committed.

With only a list of half-a-dozen names and addresses to go by, the officers' judgement of how best to deploy their time is based on only the flimsiest of foundations. It is little wonder, then, that many will leave a scene they regard as petty without taking further action.

Still, even aside from the practical difficulties of engaging with complainants in a more interventionist manner and the possible face-saving justifications for this, police officers were stubbornly unenthusiastic about having to attend these scenes. Some went so far as to doubt whether these ought to be police business at all.

Should domestic disturbances be police business?

Although the aim of the project was to watch cops policing South Africa's streets, it quickly became clear that this ambition was misconceived because a great deal of policing is not done on the street. It takes place, in fact, in people's living-rooms and bedrooms. Many officers were of the view that what goes on behind the walls and doors of people's homes is simply not the business of the police who should rather spend their time pursuing 'real criminals'.

This analysis, however, misperceives why societies have police agencies. These exist, as Egon Bittner, perhaps the most perceptive writer about policing, showed because every society needs an agency to

which people turn for help when something is happening that ought not to be happening, and about which something ought to be done immediately.² These sorts of situations are infinitely variable, he went on, and might be resolvable along any number of different paths. What makes them matters for the police is that they all may require for their resolution the non-negotiable use of force.

The police exist, therefore, because some agency must be given the right to use force (even if it's just to make an arrest) to resolve the unpleasant situations which arise inevitably when people live together in a common social space.³

Since the police alone have the authority to use force to resolve situations, especially the legal authority to compel compliance with instructions on pain of arrest, it is they who must deal with these situations. Whether a particular incident takes place in the family home and between family members is, in other words, irrelevant to the question of whether it is a matter for the police. All that counts is whether the distinctive authority granted to the police – the right to make arrests and use other forms of force – is required to resolve the matter.

The sad reality, however, which became clear on the first weekend of ride-alongs, is that just because a matter falls in the province of the police is no guarantee that they can actually achieve anything especially fruitful. Apart from lacking enthusiasm for dealing with domestic incidents, it was their abiding sense of the futility of their efforts that was most striking about officers' attitudes.

The lack of enthusiasm and the sense of futility were not, of course, unrelated.

Why police lack enthusiasm for domestic disturbances

The first weekend of night duty on the project was at the end of January in Galeshewe outside Kimberly – a station area in which domestic violence problems are notorious.

Even at night, the air was blisteringly hot and that, combined with its being the first payday after the

festive season, meant that the cops expected to deal with a lot of alcohol-fuelled domestic violence. The officers were sweaty and irritable. On the second night they were also extremely tired because none had managed to sleep much during the heat of the day.

Like every other officer encountered on the project, they also had their fair share of gripes about their lives and their lots. They were, in other words, human beings: tired, tetchy and with only limited reserves of enthusiasm for dealing with anyone else's problems.

The last point is important because of all the most common of the unpleasant situations which necessitate police attention, domestic violence is the one that places the highest premium on the enthusiasm of the responding officers. The trouble is that it is precisely at the point at which it is needed most, that police officers' supplies of enthusiasm are least abundant.

Most cases are seen as 'petty'

The reasons why this is so are numerous, but the first, and arguably most important, is that the majority of domestic violence calls are perceived to be petty. They involve shouting and threats, even some limited physical violence, but usually none of this rises above the level of common assault at the worst. Frequently there is no more to it than a case of *crimen injuria* or malicious damage to property.

These statements will annoy many people. Some will argue that there can be no such thing as a 'petty' case because seemingly minor incidents often escalate into very serious cases of domestic violence. The trauma associated with this crime is also magnified by the fact that it happens in the victim's home and is committed by someone from whom she has every right to expect much, much more.

Nevertheless, the facts of the incident itself, as it presents to the officers on the scene, do not inspire them to their best endeavours. This is related to something else: the fact is that dealing with problems besetting a family one does not know is a distasteful and unsettling business.

Family problems beyond the police's reach

Domestic violence, more so than any other kind of incident to which officers are called, takes cops into the heart of the caller's private world. The homes to which they are called are not happy ones and, when they get there, officers are forced to look behind the social and psychological screens that ordinarily protect family life from the scrutiny of the world.

Whether it is money or drink or any one of the many other problems and pathologies from which South African families suffer, whether it is a once-off occurrence or part of a pattern, there is something going on in these homes that police officers, even those with the best will in the world, are simply not able to address. They can't make people richer. They can't give them more space in which to live. They can't get mean drunks to stop drinking. They can't make difficult people any easier to live with. They lack the tools to do any of these things.

Nor, it must be said, do they want them. Odd as it may seem, given the time taken by these incidents on an average shift, a deep desire to immerse oneself in the problems of other people's families is not the principal reason why people become police officers.

And then there is the problem of time-management.

Time well spent?

Police officers know before they walk into these scenes that even if they take statements and make arrests, it is very likely that the case will be withdrawn before the matter comes to court. This does not necessarily mean, of course, that taking those steps will have been a waste of time: the removal of the suspect can be enormously beneficial to the complainant.

Nevertheless, in practice, police officers very often do regard those steps as wasteful of their time, energy and resources. They are prone to conclude, therefore, that they should conserve energy rather than expend it.

Sympathy for male perpetrators

Another element which cannot be discounted is that some cops sympathise more with the

perpetrator (if he is male) than the victim (if she is female). The principal reasons for this are sociological. Most police officers, after all, are men who have been raised in a patriarchal society that does not always firmly reject the legitimacy of all forms of gender violence.

Some of the effect of that stays with them irrespective of their duty or training. Although this does matter, it seems very unlikely that cops somehow don't mind if women are beaten up. Police officers are not monsters. Besides, the same patriarchal conception of the world has also bequeathed to many of them a sense of the responsibility of men to protect women.

Where this problem does have an effect, however, is in the more petty cases. It is then, when police officers get to the scene and listen to both sides of the story, that some will unconsciously take the side of the (male) respondent. This may well further drain the responding officers of the enthusiasm needed to act more conclusively in these cases.

Is the problem with the police or with our expectations of them?

Family failure isn't something that you can see in a snapshot and it is seldom something that reveals itself to an outsider. The process may be slow, an accumulation of expectations that go unmet, promises that are broken, hopes that are betrayed. But it could also be sudden and dramatic. In either event, there is every chance that at some point in the process, police officers – strangers to both parties – will find themselves being dragged into the fray. It is difficult to guess how often the typical officer on the typical beat sees these cases, but day after day, shift after shift, cops find themselves listening to intimate partners telling them about the latest flare up of frustration and anger.

Formally, at least, the SAPS treats these matters with the utmost seriousness. In practice, however, a great many cops deal with these families with a reluctance that borders on resentment.

The sources of this attitude lie partly in the pragmatics of police effort. Put simply, police officers don't think the cases merit all that much

attention. The crimes involved, measured by the crude yardstick of how much blood has been spilt are, more often than not, petty and the paperwork involved is significant. Despite this, when measured in terms of the number of cases going to court, police efforts at these scenes go relatively unrewarded: in the majority of cases, complaints are withdrawn by the victim or prosecutors decline to prosecute.

By way of conclusion, the question that needs answering is whether the police are failing to implement the DVA or whether the implementability of the Act itself should be considered? In this regard, the research tends to elicit sympathy with the cops, not with the Act.

The problem is that the Act is premised on the notion that with a bit of guidance from the legislature, the police can learn to use their authority to ease the pain, trauma and fear of victims in abusive relationships; that police can be made to become more humane in their treatment of the abused. The trouble with this is not just that the police are imperfect human beings – who isn't? – but tragically that, for most of the cases which fall within the very wide ambit of the Act, the powers of the police are very poor tools with which to effect the changes that these families need.

They could arrest perpetrators (although most cases will be withdrawn) and they can use their authority to calm situations enough to allow the parties to go to bed. In both cases, however, nothing much will have been achieved except a partial, very temporary solution to a problem for which police powers are in reality, very ill-suited.

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Endnotes

- 1 A Altbeker, *The Dirty Work of Democracy*, Jonathan Ball Publishers, Johannesburg, forthcoming.
- 2 E Bittner, *Aspects of Police Work*, Northwestern University Press, Boston, 1990, p 249.
- 3 For a more elaborate account of this point see my

presentation to the 10 years of criminal justice transformation conference held in Gordon's Bay in February 2005 and available at <<http://www.iss.co.za/Seminars/2005/csvr/polparadigms.pdf>>